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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LUCILLE SAUNDERS et al. AND FIX THE CITY, Petitioners and Appellants, v. CITY OF LOS ANGELES et. al., Defendants and Respondents.	B232415 (Los Angeles County Super. Ct. No. BS115435)

APPEAL from an order of the Superior Court of the County of Los Angeles, John A. Torribio, Judge. Affirmed.

Venskus & Associates, Sabrina D. Benskus and Emilee A. Moeller for Petitioners and Appellants Lucille Saunders et al.

Chatten-Brown & Carstens, Jan Chatten-Brown, Douglas P. Carstens, and Michelle N. Black for Petitioner and Appellant Fix the City.

Carmen A. Trutanich, City Attorney, Terry P. Kaufmann Macias, Deputy City Attorney, and Mary J. Decker, Deputy City Attorney for Defendants and Respondents City of Los Angeles et al.

INTRODUCTION

Petitioners and appellants Lucille Saunders[1] and Fix the City appeal from a judgment denying their respective petitions for writs of mandate. Saunders also appeals from that portion of the judgment denying her requests for injunctive and declaratory relief and her claim for violation of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.)

We hold that the trial court properly concluded that the legal duties upon which Saunders and Fix the City based their claims were discretionary. Therefore, mandamus, injunctive, and declaratory relief were unavailable. We further hold that because substantial evidence supported the trial court's finding on Saunders's delayed discovery claim, the court correctly concluded that the statute of limitations barred Saunders's claim for relief under CEQA. And we reject the challenges on appeal to various evidentiary rulings of the trial court because there is no showing that those rulings prejudiced either Saunders or Fix The City. We therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND[2]

A. The General Plan

Government Code section 65300 requires each county and city to adopt a comprehensive general plan for future development. According to the City, its general plan is a "'constitution for development,' the foundation upon which all land use

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[1] In this consolidated proceeding, Saunders, an individual, and 11 associations or other entities filed an initial action against defendants and respondents City of Los Angeles and its Planning Department (the City). Those petitioners and appellants are referred to collectively herein as Saunders.

[2] The respective requests for judicial notice of the City and Fix the City are denied as the documents were not before the trial court. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 379, fn, 2.)

decisions in a city or county are to be based. It expresses community development goals and embodies public policy relative to the distribution of future land use, both public and private. Pursuant to Government Code section 65350, a general plan must include the following seven mandated elements: (i) land use; (ii) circulation; (iii) housing; (iv) conservation; (v) noise; (vi) open space; and (vii) safety." In addition, Government Code section 65303 permits the inclusion of optional elements that address needs, objectives, or requirements of a county or city. From the City's perspective, counties and cities have flexibility in organizing their general plans, as long as all of the requirements specified for each of the seven mandated elements are addressed. State law has given a city with the diversity and size of Los Angeles latitude in formatting, adopting, and implementing its general plan, as long as it adheres to the minimum requirements of state law.

B. The Framework Element

In 1996, the City adopted an optional General Plan Framework Element (Framework Element) as part of its general plan. The Framework Element stated that it was "a strategy for long-term growth which set[] a citywide context to guide the update of the community plan and citywide elements. The [Framework] Element respond[ed] to [s]tate and [f]ederal mandates to plan for the future. In planning for the future, the City . . . [uses] population forecasts provided by the Southern California Association of Governments (SCAG). The Framework Element does not mandate or encourage growth. Because population forecasts are estimates about the future and not an exact science, it is possible that population growth as estimated may not occur: it may be less or it may be more. The City could be at the beginning of a long decline in population or at the beginning of a sharp increase."

Chapter 10 of the Framework Element identifies and describes the implementation programs for that optional Element. The introduction to Chapter 10 provides in pertinent part: "An implementation program is an action, procedure, program, or technique that carries out general plan policy. However, not all plan policies can be achieved in any given action, and in relation to any decision, some goals may be more compelling than

others. On a decision-by-decision basis, taking into consideration factual circumstances, it is up to the decision makers to decide how to best implement the adopted policies of the general plan in any way which best serves the public health, safety, and general welfare."

Chapter 10 specifically provides that "[p]rogram implementation is contingent on the availability of adequate funding, which is likely to change over time due to economic conditions, the priorities of [f]ederal and regional governments and funding agencies, and other conditions. The [implementation] programs should be reviewed periodically and prioritized, where necessary, to reflect funding limitations and the City's objectives. In addition, amounts and sources of funding, initiation dates, responsible agencies and the detailed work scope of [implementation] programs may be changed without requesting amendments to the . . . Framework Element."

The executive summary of the Framework Element also provides that "[a] diversity of programs [is] specified to implement the . . . Framework Element's policies. Their timing is contingent on the availability of adequate funding."

Chapter 10 goes on to describe in excess of 60 implementation programs, including the two at issue in this case: Programs 42 and 43. Program 42 is an implementation "program to monitor the status of development activity, capabilities of infrastructure and public services to provide adequate levels of service, and environmental impacts (e.g., air emissions), identifying critical constraints, deficiencies and planned improvements (where appropriate)." Program 43 is an implementation program intended to generate an "Annual Report on Growth and Infrastructure [Annual Report] that documents the results of the annual monitoring program."

Program 43 specifically directs the City's Planning Department to "[p]repare an Annual Report on Growth and Infrastructure based on the results of the Monitoring Program, which will be published at the end of each fiscal year and shall include information such as population estimates and an inventory of new development. This report is intended to provide City staff, the City Council and service providers with information that can facilitate the programming and funding of capital improvements and

services. Additionally, this report will inform the general plan amendment process. Information shall be documented by relevant geographic boundaries, such as service areas, Community Plan Areas, or City Council Districts."

Chapter 1 of the Framework Element also discusses the Annual Report program. "The Department of City Planning shall annually review the need to comprehensively update the citywide elements, including the Framework Element and the community plans. The results of this annual review shall be reported to the City Planning Commission, the City Council, and the Mayor through the Annual Report on Growth and Infrastructure. This report shall recommend which citywide element or community plan should be updated and why. These recommendations shall be based on an evaluation of changing circumstances, trends, and other information provided by the Monitoring System."

C. Prior Legal Challenges to the Framework Element

After the City adopted the Framework Element in 1996, a community association filed a lawsuit challenging the adoption of the final environmental impact report for and the approval of the Framework Element. (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1254 (*Federation I*).) On appeal from the trial court's judgment denying the petition for writ of mandate, the Court of Appeal in *Federation I* concluded that "[t]here [was] no substantial evidence in the record to support a finding that the mitigation measures have been 'required in, or incorporated into' . . . the [Framework Element] in the manner contemplated by CEQA, and the city failed to provide that the mitigation measures would actually be implemented under the [Framework Element] . . . ." (*Id.* at p. 1261.) The court in *Federation I* therefore reversed the judgment denying the petition for writ of mandate and remanded the matter with directions to grant the petition and vacate the City's approval of the Framework Element and specify what actions by the City were necessary to comply with CEQA. (*Id.* at p. 1267.)

On remand, the City vacated the Framework Element, adopted new CEQA findings and a statement of overriding considerations, and readopted the Framework Element in August 2001. (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1191-1192 (*Federation II*).)

In September 2001, a community association filed a second lawsuit challenging the readopted Framework Element and the City's new CEQA findings and statement of overriding considerations. (*Federation II*, *supra*, 126 Cal.App.4th 1180, 1193.) The trial court denied the petition for writ of mandate and on appeal from that judgment, the Court of Appeal affirmed. (*Id.* at pp. 1193, 1207.)

D. Current Litigation

In June 2008, Saunders filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the City. The petition sought a writ commanding the City to comply with Programs 42, 43, and 44 and to approve a revised Hollywood Community Plan within six months of the issuance of the writ.[3] The complaint sought declarations that the City was not in compliance with its general plan, its municipal code, and the Government Code for failing to perform the mandatory duties set forth in Programs 42, 43, and 44 and failing to update, revise, and approve the Hollywood Community Plan. The complaint also sought to enjoin the City from approving any further zoning ordinances, specific plan amendments, general plan amendments, development agreements or tentative subdivision maps unless and until the City established a mandatory monitoring program and prepared Annual Reports for the years 1999 through 2008.

In November 2008, Fix the City filed a petition for writ of mandate that sought essentially the same relief as Saunders's writ petition, but added allegations that the

[3] On appeal, Saunders does not challenge the City's compliance with Program 44 or any acts or omissions regarding a revised Hollywood Community Plan.

City's failure to prepare Annual Reports also violated section 216 of the City Charter.[4] Fix the City, however, did not seek declaratory or injunctive relief.

In September 2009, Saunders filed a motion to amend her complaint to add a claim under CEQA, which motion was granted in October 2009. The CEQA claim alleged that by deleting the mitigation measures of preparing and submitting Annual Reports, the City violated CEQA.

The trial court conducted a trial on the consolidated actions in November 2010, and in January 2011 issued an order denying both petitions, Saunders's requests for injunctive and declaratory relief, and the CEQA claim. In ruling on the petitions and the complaint, the trial court concluded, inter alia, as follows: "The Framework [Element] does not impose any mandatory duties. The City Council added a caveat to the adoption of the Framework Element stating that the programs could change due to a wide variety of factors including the availability of adequate funding. . . . ('In addition, amounts and sources of funding, initiation dates, responsible agencies and detailed work scope of programs may be changed without requesting amendments to the General Plan Framework Element'), . . . It is clear that the decisionmakers did not create a mandatory duty. The Planning Department has consistently interpreted the language of Chapter 10 as discretionary and not mandatory. . . . The 'contingent upon' language in the relevant sections of the Framework Element make it clear that the use of the word 'shall' in the other parts of the Element does not create a mandatory duty when addressing the method, manner and timing of implementation. See *Crespin v. Kizer* (1990) 226 Cal.App.3d 498, 513."

In addition to determining as a matter of law that the implementation of the monitoring and Annual Report programs were discretionary, the trial court made, inter alia, the following factual findings concerning those programs:

"The City implemented program 43 by preparing three bound annual reports for the years 1990-94, 1994-1996, 1996-1998. . . . The reports were expensive to produce

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[4] Fix the City does not pursue on appeal its claim that the City was in violation of section 216 of its Charter.

and by the time they were bound they were already out of date. Thereafter, the City took advantage of new technology and expanded the information it made available to the public on its website. The information that would have been published as a bound report was available on the website. The City Council, Mayor and Planning Commission were notified of the changes. The information is updated quarterly and annually. . . . [¶] The City also established a monitoring program. The Planning Department has always monitored growth and development and worked with 11 technical departments to track infrastructure. . . . The City also has a transportation database. (Fn. omitted.) . . . Unlike the smaller cities familiar to petitioners' expert, responsibility for monitoring infrastructure is not centralized in [a] single 'Community Development Department.'"

The trial court also rejected Saunders's request for injunctive relief. The trial court said, "Injunctive relief is inappropriate. The court cannot simply stop all development in the City and it certainly does not have the expertise to review each proposed amendment to land use regulations, specific plan amendments, development agreements, tentative subdivision maps and community plan updates."

The trial court further concluded, inter alia, that the CEQA claim was barred by the statute of limitations. "[T]he [CEQA] claim is time barred. On January 14, 2008, the Planning Department notified petitioners' counsel by letter that there were no written reports for the years 1999 through 2007. Ex. 1. Again on January 26, 2009 the City notified petitioners' counsel about the online format in its discovery responses. Ex. 2. Yet the motion to amend the petition to add the CEQA claim was not filed until September 8, 2009, well beyond the 180 day limit. Arguably, even the March 11, 2009 'discovery date' would have made the amendment time barred because the amendment was not filed until October 9, 2009. The CEQA claim must be commenced, i.e., filed within 180 days of the 'commencement of the project.' The amendment was filed as of the date of the hearing on the motion, not the date of the filing of the motion."

In March 2011, the trial court entered judgment in favor of the City on all claims for relief in the consolidated actions. Saunders and Fix the City thereafter filed timely notices of appeal from the judgment.

DISCUSSION

A. Claims Based on Mandatory Duty

1. Standard of Review

"'A traditional writ of mandate under Code of Civil Procedure section 1085 is a method for compelling a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires.' (*Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 995 [109 Cal.Rptr.2d 454], fn. omitted; accord, *Shelden v. Marin County Employees' Retirement Assn*. (2010) 189 Cal.App.4th 458, 463 [116 Cal.Rptr.3d 883] (*Shelden*).) The court reviews legal questions, including questions of statutory construction, de novo. (See *Shelden, supra*, at p. 463; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798 [116 Cal.Rptr.3d 33].) [¶] Appellate review in an ordinary mandamus proceeding '"is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence."' (*Agosto* [*v. Board of Trustees of Grossmont-Cuyamaca Community College Dist.* (2010)] 189 Cal.App.4th [330,] 336, quoting *Saathoff v. City of San Diego* (1995) 35 Cal.App.4th 697, 700 [41 Cal.Rptr.2d 352].)" (*Bernard v. City of Oakland* (2012) 202 Cal.App.4th 1553, 1558-1559.)

"In reviewing a trial court's judgment on a petition for writ of mandate, the appellate court is required to exercise independent judgment on legal issues. (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 53 [80 Cal.Rptr.2d 137].) . . . The interpretation and applicability of statutes is clearly a question of law. (*Sutco Construction Co. v. Modesto High School Dist.* (1989) 208 Cal.App.3d 1220, 1228 [256 Cal.Rptr. 671].) Where the statute is clear, the 'plain meaning' rule applies. (*Ibid.*) 'The

Legislature is presumed to have meant what it said, and the plain meaning of the language governs. [Citation.]' (*Ibid.*) [¶] To the extent that facts are disputed, they should be reviewed under the substantial evidence standard. (*Vasquez* [*v. Happy Valley Union School Dist.* (2008)] 159 Cal.App.4th [969,] 980.) 'The substantial evidence standard for review has been described by our Supreme Court as . . . [¶] " . . . ' . . . a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . ." [Citation.]' (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462 [17 Cal.Rptr.3d 96].)" (*McIntyre v. Sonoma Valley Unified School Dist.* (2012) 206 Cal.App.4th 170, 179.)

Because Saunders's injunctive and declaratory relief claims are predicated on the same legal issue as the mandamus claims for relief, we review the trial court's determination of those legal issues de novo. (See *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463 [Although appellate review of a trial court ruling on a request for injunctive relief is generally limited to whether the court's decision constituted an abuse of discretion "[t]o the extent that the trial court's assessment of likelihood of success on the merits depends on legal rather than factual questions, our review is de novo"].)

2. Analysis

The requests for mandamus relief, as well as Saunders's related claims for injunctive and declaratory relief, are based on the assertion that Program 42—the monitoring program— and Program 43—the Annual Report on growth and infrastructure—established mandatory legal duties that the trial court can order the City to perform by way of writ of mandate, injunction, or a declaration of rights and duties. According to Saunders and Fix the City, certain language in the Framework Element, including the repeated use of the term "shall" in the program descriptions, indicates that

the City Council intended to impose upon the Planning Department mandatory legal duties to monitor growth and infrastructure and prepare Annual Reports concerning those topics. Therefore, according to Saunders and Fix the City, the Planning Department had no discretionary power to eliminate the monitoring and Annual Report programs. The City counters that it did not eliminate either program, but rather changed the method, manner, and timing of the implementation of those programs. As the City reads the Framework Element, the Planning Department had discretion to make those changes, and that discretion was not subject to the mandamus, injunctive, or declaratory relief sought. Resolution of this issue requires us to interpret the language of the Framework Element under well established principles.

The primary goal in construing a statute is to ascertain legislative intent so as to effectuate the purpose of the law. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386.) "As with any statutory construction inquiry, we must look first to the language of the statute. 'To determine legislative intent, a court begins with the words of the statute, because they generally provide the most reliable indicator of legislative intent.' (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 871 [39 Cal.Rptr.2d 824, 891 P.2d 804].) If it is clear and unambiguous our inquiry ends. There is no need for judicial construction and a court may not indulge in it. (*In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 348 [158 Cal.Rptr. 350, 599 P.2d 656].) 'If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.' (*People v. Snook* (1997) 16 Cal.4th 1210, 1215 [69 Cal.Rptr.2d 615, 947 P.2d 808].)" (*Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047.)

"'But "[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend." [Citations.] Thus, "[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act." [Citation.] Finally, we do not construe statutes in isolation, but rather read every statute "with reference to the entire scheme of law of which it is part so that the whole may be

harmonized and retain effectiveness." [Citation.]' (*People v. Pieters* (1991) 52 Cal.3d 894, 898-899 [276 Cal.Rptr. 918, 802 P.2d 420].)" (*People v. Ledesma* (1997) 16 Cal.4th 90, 95.)

"'Whether a particular statute is intended to impose a mandatory duty, rather than a mere obligation to perform a discretionary function, is a question of statutory interpretation for the courts.' (*Creason v. Department of Health Services* (1998) 18 Cal.4th 623, 631 [76 Cal.Rptr.2d 489, 957 P.2d 1323] (*Creason*); see *Manriquez v. Gourley* (2003) 105 Cal.App.4th 1227, 1234-1235 [130 Cal.Rptr.2d 209] [same rules of statutory construction govern interpretation of regulations by administrative agencies].) We examine the 'language, function and apparent purpose' of each cited enactment 'to determine if any or each creates a mandatory duty designed to protect against' the injury allegedly suffered by plaintiff. (*Haggis* [*v. City of Los Angeles* (2000)] 22 Cal.4th [490,] 500.) At the outset, we recognize that the term 'shall' is defined as 'mandatory' for purposes of the Health and Safety Code. (Health & Saf. Code, § 16; see also Gov. Code, § 14.) However, as we have emphasized, this term's inclusion in an enactment does not necessarily create a mandatory duty; there may be 'other factors [that] indicate that apparent obligatory language was not intended to foreclose a governmental entity's or officer's exercise of discretion.' (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 910, fn. 6 [136 Cal.Rptr. 251, 559 P.2d 606] (*Morris*); see *Haggis, supra*, 22 Cal.4th at p. 499, quoting *Morris*.)" (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 898-899.)

"[T]he usual rule with California codes is that 'shall' is mandatory and 'may' is permissive unless the context requires otherwise. (*Roseville Community Hosp. v. State of California* (1977) 74 Cal.App.3d 583, 587-588, fn. 4 [141 Cal.Rptr. 593]; Gov. Code, §§ 5, 14.) At the same time, though, not every statute that uses the word 'shall' is obligatory rather than permissive, and there may be factors other than statutory language that may indicate that apparently obligatory language was not intended to foreclose a government entity's exercise of discretion. (*Haggis*, at p. 499.)" (*Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 84 Cal.App.4th 605, 614.)

When the language of Programs 42 and 43 is read together and harmonized with other language of the Framework Element, including the clear and unambiguous introductory language to Chapter 10 governing the implementation of the programs established by the Framework Element, the implementation duties created by those programs emerge as discretionary. As the first paragraph of Chapter 10 explains, "not all plan policies can be achieved in any given action, and in relation to any decision, some goals may be more compelling than others. On a decision-by-decision basis, taking into consideration factual circumstances, *it is up to decision makers to decide how best to implement the adopted policies* of the general plan in any way which best serves the public health, safety and general welfare." (Italics added.) That general language suggests that, as to program implementation, the City Council intended to vest the Planning Department with broad discretion and flexibility when deciding how best to implement the policies of the Framework Element.

Moreover, the introduction to Chapter 10 proceeds to specify that program implementation is contingent on funding and that initiation dates and the scope of work under a given program can be changed by the Planning Department without first requesting amendments to the Framework Element. That introduction states, "Program implementation is contingent on the availability of adequate funding, which is likely to change over time due to economic conditions, the priorities of [f]ederal and regional governments and funding agencies, and other conditions. The programs should be reviewed periodically and prioritized, where necessary, to reflect funding limitations and the City's objectives. In addition, amounts and sources of funding, initiation dates, responsible agencies and the detailed work scope of programs may be changed without requesting amendments to the . . . Framework Element."

That language unequivocally establishes program implementation under the Framework Element as dependent upon various factors, including funding, and therefore not mandatory in the sense that Saunders and Fix the City assert. The City Council vested the Planning Department with broad discretion to implement the programs enunciated in the Framework Element, and that clear legislative intent militates against

the conclusion that the monitoring and Annual Report requirements created mandatory legal duties subject to enforcement by mandamus, injunctive, or declaratory relief. Rather, the language in Chapter 10 makes clear that the Planning Department would control the method, manner, and timing of program implementation. Here, as the trial court found, the Planning Department did not, as Saunders and Fix the City assert, eliminate the monitoring or reporting programs. It changed the timing of and manner in which those programs were implemented. As the trial court correctly concluded, that fundamental change in format was a matter within the Department's discretion and expertise and, as such, was not subject to mandamus, injunctive, or declaratory relief.

Saunders and Fix the City argue that the use of the term shall in the descriptions of Programs 42 and 43 demonstrates that the City Council intended to establish mandatory legal duties under those programs that dictated the specific method, manner, and timing of program implementation. But, under the authorities referred to above, the language in those descriptions should be read in the context of the introductory language to Chapter 10, which, as discussed, evinces a legislative intent to create discretionary implementation powers under those programs. As noted, the trial court found that the City had not refused to implement those programs, but rather had made a discretionary determination to change the manner in which they were implemented. Because that finding was supported by substantial evidence, the trial court had no power to second guess the Planning Department's exercise of discretion.

To give effect to the evident legislative intent, as we do under the canons of statutory construction, the use of the term "shall" in the program descriptions in question does not foreclose the exercise of that discretionary power by the Planning Department. Instead, in this case, the term "shall" reads as permissive, not obligatory, in order to effectuate the evident legislative intent of the City Council. To construe that term literally in this context would lead to an absurd consequence that the City Council did not intend—divesting the Planning Department of all discretion in determining when and how to implement the Framework Element's programs. Therefore, the trial court correctly concluded that mandamus relief could not be premised on such discretionary

duties and denied the petitions for writs of mandate. Similarly, because Saunders's claims for injunctive and declaratory relief are based on the same discretionary duties as the mandamus claims, the trial court correctly denied those equitable claims for relief as well.[5]

B. CEQA Claim

1. Standard of Review

Saunders also challenges on appeal the trial court's finding that her CEQA claim was barred by the applicable statute of limitations. Resolution of such a statute of limitations issue is normally a question of fact. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112 (*Jolly*); *Institoris v. City of Los Angeles* (1989) 210 Cal.App.3d 10, 17.) "The trial court's finding on the accrual of a cause of action for statute of limitations is upheld on appeal if supported by substantial evidence." (*Institoris v. City of Los Angeles, supra*, 210 Cal.App.3d at p. 17; see *Enfield v. Hunt* (1984) 162 Cal.App.3d 302, 310.) When, as here, however, a statute of limitations is applied to undisputed facts, review is de novo. (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, 489; *Goodstein v. Superior Court* (1996) 42 Cal.App.4th 1635, 1641.)

2. Statute of Limitations

Saunders contends that the CEQA violation asserted in her complaint accrued within the applicable 180-day statute of limitations.[6] According to Saunders, she could

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[5] Fix the City argues that the Annual Report program was a mandatory mitigation measure under CEQA that the Planning Department had no discretion to eliminate. Because Fix the City raises that contention for the first time on appeal, it has forfeited the contention. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264-265.)

[6] Public Resources Code section 21167, subdivision (a) provides: "An action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows: [¶] (a) An action or proceeding alleging that a public agency is carrying out or

not have discovered the violation—deleting the mitigation measure of preparing and submitting the Annual Reports—prior to the City's service of supplemental discovery responses on March 11, 2009.

"Under the statute of limitations, a plaintiff must bring a cause of action within the limitations period applicable thereto after accrual of the cause of action. [Citations.] [¶] The general rule for defining the accrual of a cause of action sets the date as the time 'when, under the substantive law, the wrongful act is done,' or the wrongful result occurs, and the consequent 'liability arises.' [Citation.] In other words, it sets the date as the time when the cause of action is complete with all of its elements [citations], the elements being generically referred to by sets of terms such as 'wrongdoing' or 'wrongful conduct,' 'cause' or 'causation,' and 'harm' or 'injury' [citations]." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart)*.)

The "discovery rule" is an exception to the general rule for "defining the accrual of a cause of action." (*Norgart, supra*, 21 Cal.4th at p. 397.) "It postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Ibid*.) Under the discovery rule, the limitations period begins once a party """'has notice or information of circumstances to put a reasonable person on *inquiry* . . . .'"" [Citations.]" (*Jolly, supra*, 44 Cal.3d at pp. 1110-1111.) The discovery rule may be expressed by the Legislature or implied by the courts. (*Norgart, supra*, 21 Cal.4th at p. 397.)

"[T]he burden of pleading and proving belated discovery of a cause of action falls on the plaintiff. (*Hobart v. Hobart Estate Co*. (1945) 26 Cal.2d 412, 437 [159 P.2d 958] ['The provision tolling operation of the statute until discovery . . . has long been treated as an exception and, accordingly, this court has held that if an action is brought [beyond

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has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, *within 180 days from the date of commencement of the project*." (Italics added.)

the applicable statute of limitations], [the] plaintiff has the burden of pleading and proving that he did not make the discovery until within [the statutory period]']; *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 833 [195 Cal.Rptr. 421] ['"It is [the] plaintiff's burden to establish 'facts showing that he was not negligent in failing to make the discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on inquiry'"']." (*Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519,1533.)

"Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her. As we said in *Sanchez* and reiterated in *Gutierrez*, the limitations period begins once the plaintiff '"'has notice or information of circumstances to put a reasonable person *on inquiry*. . . .'"' (*Gutierrez* [*v. Mofid* (1985)] 39 Cal.3d [892,] 896-897, quoting *Sanchez* [*v. South Hoover Hospital* (1976)] 18 Cal.3d [93,] 101 (italics added by the *Gutierrez* court).) A plaintiff need not be aware of the specific 'facts' necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her." (*Jolly, supra,* 44 Cal.3d at pp. 1110-1111.)

The City presented evidence that showed that it changed the format of its Annual Reports in April 2000. That evidence supported a reasonable inference that, for purposes of Public Resources Code section 21167, subdivision (a), the "project" commenced some nine years before Saunders filed her amended complaint asserting the CEQA claim.[7] The City also submitted evidence that, on January 14, 2008, the City informed Saunders's counsel of record that the Planning Department had "not produced an Annual Report on Growth and Infrastructure for the years 1999 through 2007 . . . ." That evidence

[7] Contrary to Saunders's assertion, her amended complaint was not filed in the trial court until she was granted leave to file it on October 9, 2009.

supported a reasonable inference that Saunders knew or should have known in January 2008 that the City was no longer generating bound Annual Reports under Program 43. Because Saunders did not file her CEQA claim until October 2009, after the 180 days limitation period had expired, the trial court correctly concluded, based on the foregoing substantial evidence, that the CEQA claim was barred by the statute of limitations.

Saunders contends that the January 14, 2008, letter to her counsel did not specifically disclose that the City had made a determination not to generate bound Annual Reports, as it had generated in the past, and that further investigation and formal discovery were required to discover that determination. The January 14, 2008, letter, however, expressly advised that bound Annual Reports had not been produced for nine consecutive years. That fact was sufficient to put a reasonable person on notice that the previous practice of producing bound Annual Reports had been terminated, and that fact should have been confirmed through the exercise of due diligence within 180 days from the receipt of the January 14, 2008, letter, i.e., on or before July 14, 2008. Because Saunders did not file the CEQA claim until October 9, 2009, we conclude that substantial evidence supported the trial court's finding that Saunders's CEQA claim accrued more than 180 days from the filing of that claim.[8]

C. Evidentiary Claims

In their opening briefs, Saunders and Fix the City make cursory assertions of error[9] concerning the trial court's rulings admitting certain evidence offered by the City

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[8] On appeal, Saunders contends that the so-called "continuing violation doctrine" applies to facts of this case and, therefore, her CEQA claim is not time barred. But the record does not show that Saunders made that contention in the trial court. Accordingly, Saunders has forfeited the contention on appeal. (*Keener v, Jeld-Wen, Inc.*, *supra*, 46 Cal.4th at pp. 264-265.)

[9] As the City points out, Saunders and Fix the City did not raise their claims of evidentiary error under separate point headings in fully developed arguments. Instead, they asserted those claims in the discussion of other contentions, without fully developing

and excluding certain evidence that they offered. According to Saunders and Fix the City, those rulings were legally erroneous and an abuse of discretion.

"'"Broadly speaking, an appellate court reviews any ruling by a trial court as to the admissibility of evidence for abuse of discretion."' (*People ex rel. Lockyer v. Sun Pacific Farming Co*. (2000) 77 Cal.App.4th 619, 639 [92 Cal.Rptr.2d 115].) The court's '"discretion is only abused where there is a clear showing [it] exceeded the bounds of reason, all of the circumstances being considered."' (*Id*. at p. 640.) However, even where a trial court improperly excludes evidence, the error does not require reversal of the judgment unless such error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13.)" (*Poniktera v. Seiler* (2010) 181 Cal.App.4th 121, 142; see also *Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431-1432 [even where evidence is improperly excluded, the error is not reversible unless it is reasonably probable a result more favorable to the appellant would have been reached absent the error]; Evid. Code §§ 353, subd. (b) and 354; Code Civ. Proc. § 475.) "[A] reviewing court should not disturb the exercise of a trial court's discretion unless it appears that there has been a miscarriage of justice. Thus, in *Loomis v. Loomis*, 181 Cal.App.2d 345, 348-349 [4-6] [5 Cal.Rptr. 550], it was said: 'It is fairly deducible from the cases that one of the essential attributes of abuse of discretion is that it must clearly appear to effect injustice. [Citations.] Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

Because we have affirmed the trial court's rulings on the mandamus, injunctive, and declaratory relief claims on a legal issue—the discretionary nature of the duties upon which those claims were based—we need not address any of the asserted evidentiary

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or adequately explaining them. On this basis, we also reject the contentions. (See *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 294.)

errors that relate to those claims. Even if Saunders and Fix the City's assertions of error concerning the admission and exclusion of evidence are correct, they make no showing that they were prejudiced by one or more of those rulings. Absent an affirmative showing of prejudice, i.e., a miscarriage of justice, we cannot reverse the judgment based on any of the asserted evidentiary errors.

DISPOSITION

The judgment of the trial court is affirmed. No costs are awarded.
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.